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Filing date: **10/09/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91202219
Party	Plaintiff Eat Right Foods Ltd.
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Submission	Testimony For Plaintiff
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Filer's e-mail	jmauch@sflaw.com, jmartin@sflaw.com, calendar@sflaw.com
Signature	/s/ Joseph V. Mauch
Date	10/09/2012
Attachments	Corrected Transcript R.Douglas-Clifford with Exhibits_Part7.pdf (9 pages) (2192882 bytes)



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Submitted by admin on Wed, 04/14/2010 - 08:37

☒ [Nutrition Prescription Handbook - Combo](#)

Based on a comprehensive 15-minute survey conducted by Dr. Fuhrman, the Nutrition Prescription will provide a personalized nutritional assessment and eating plan, 28 days of personalized emails as well as access to ERA's Membership Website, free for 60 days. You will also receive the Nutritarian Handbook - A Complete Program and Food Scoring Guide designed to deliver maximum weight loss and superior health.

\$19.95

☒ [Nutritarian Handbook](#)

A Complete Program and Food Scoring Guide designed to deliver maximum weight loss and superior health. This Handbook introduces the reader to all key concepts about being a Nutritarian - someone who naturally prefers the most nutritious foods for the body.

\$9.95

☒ [Apple Cinnamon Flavored Date and Nut Bars](#)

An Apple Cinnamon flavoured bar - delicious and healthy bar made from dates, nuts and seeds includes: 15 bars - 40 grams per bar.

\$5.95

☒ [Chocolate Flavored Date and Nut Bars](#)

Chocolate flavoured bar - delicious and healthy bar made from dates, nuts and seeds, includes: 15 bars - 40 grams per bar.

\$5.95

☒ [Original Date and Nut Bars](#)

A delicious and healthy bar made from dates, nuts and seeds, includes: 15 bars - 40 grams per bar.

\$5.95

☒ [Eat For Health 2 Book Set](#)

Book One - The Mind Makeover gives you the essential steps for sustainable success and,
Book Two - The Body Makeover includes eating plans and hundreds of delicious recipes to keep you on track.

\$29.95

☒ [Eat for Health Audio CD](#)

A six-CD series for the car or home. Read by program developer and author Dr. Joel Fuhrman, The Mind Makeover principles come to life with his personal insight.

\$24.95

☒ [Eating Like a Nutritarian DVD](#)

Dr. Joel Fuhrman presents the program's 10 Basic Principles. Plus, he takes you on a virtual trip to the grocery store - teaching you how to shop and eat your way to optimal health and lasting weight loss.

\$19.95

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g.n.r.
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☐ [Daily Nutritarian Food Pyramid Magnet](#)

The Daily Nutritarian Food Pyramid visually shows all the key foods you should eat for great health; put it up on your refrigerator as a daily reminder to stay on course. The magnet also contains the top 30 foods that should be part of your shopping list and eating plan.

\$1.94

☐ [Lose Fat Fast DVD](#)

Lose Fat Fast stimulates your metabolism by building lean muscle mass. The Abs Workout will give you the sexy curves you've always wanted. For those who want an extra challenge, try our bonus Dance Tone workout, a fun and easy blend of dance styles, Pilates and Yoga.

\$19.95

☐ [Eat Right America Bundle](#)

A comprehensive program that gives you personalized nutritional direction, incredible doctor-directed support and interactive tools that help you achieve your goals. Each Bundle includes:

- Personal Nutrition Prescriptions (4 Access Codes)
- ERA's Community Website (2 Months Free)
- Eat For Health 2-Book Set
- Eat For Health Audio CD
- Eating Like A Nutritarian DVD
- Secrets To Healthy Cooking DVD
- Daily Nutritarian Food Pyramid Magnet

\$97

☐ [Secrets to Healthy Cooking DVD](#)

Dr. Fuhrman shares his favorite recipes for eating right along with practical steps for you to create healthy dishes at home.

\$19.95

☐ [Nutritional Excellence: Eating for Health and Longevity CD](#)

Dr. Fuhrman discusses how to achieve nutritional excellence during one of his live talks.

\$19.95

☐ [Osteoporosis Protection for Life DVD](#)

An optimal, drug-free approach to build and maintain healthy bones.

\$19.95

☐ [Cholesterol Protection for Life](#)

There is irrefutable evidence that high cholesterol levels are associated with increased risk of coronary artery disease and a resultant heart attack. Cholesterol Protection For Life explains my nutritional approach to heart disease and cholesterol lowering. It describes the safest and most potent natural cholesterol-lowering agents that can be used in conjunction with my dietary approach to assure that dramatic cholesterol lowering can occur without the risks of taking drugs.

\$14.95

☐ [Eat for Health Softcover Book](#)

Now get all of the great information from the **Eat For Health 2 Book Set** in one convenient paperback edition. Book One – The Mind Makeover gives you the essential steps for sustainable success and, Book Two – The Body Makeover includes eating plans and hundreds of delicious recipes to keep you on track.

\$17.95

☐ [Disease-Proof Your Child \(Paperback\)](#)

Dr. Fuhrman presents the fascinating science which demonstrates that the current epidemic of adult cancers and other diseases are closely linked to what we eat as children. This book explains how eating right in childhood is the most powerful weapon against the growing cancer epidemic. He also reveals how the seeds for future auto-immune diseases are sown in childhood, and how by eating right today, children can be healthy tomorrow.

\$14.95

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Whole Foods Market Oakville - Health Start Here, John Mackey, CEO/Founder Whole Foods Market Ontario Tour, March 24, 2010.

Photo courtesy:
[kcc]
Kevin Charlie
wedding + lifestyle photographer
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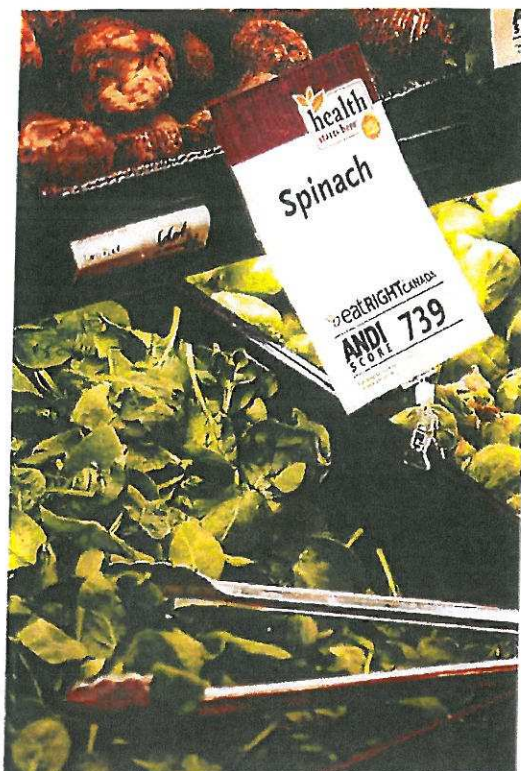
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Whole Foods Market Oakville - Health Start Here, John Mackey, CEO/Founder Whole Foods Market Ontario Tour, March 24, 2010.

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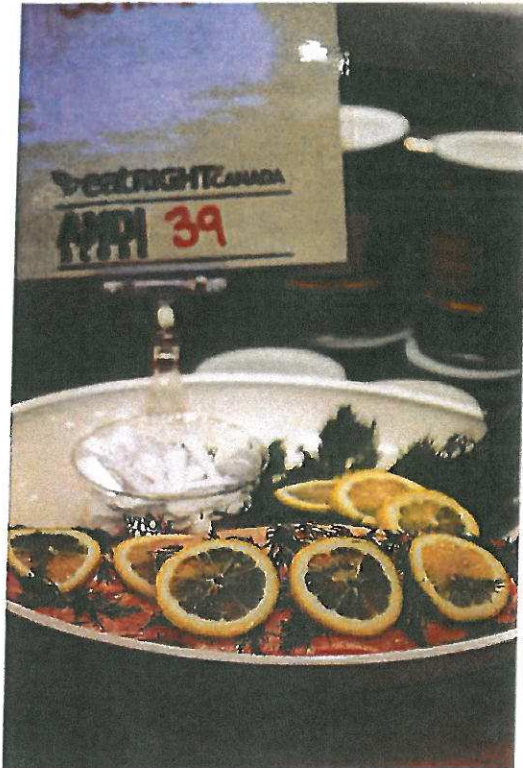
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Whole Foods Market Oakville - Health Start Here, John Mackey, CEO/Founder Whole Foods Market Ontario Tour, March 24, 2010.

Photo courtesy:
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Kevin Charlie
wedding + lifestyle photographer
www.kevincharlie.com

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Eat Right Foods Ltd

From: Eat Right Foods Ltd <eatright@xtra.co.nz>
Sent: Friday, 19 November 2010 10:58 a.m.
To: cs@eatrightamerica.com
Cc: James Martin; tfall@foxrothschild.com
Subject: Whole Foods Market Payment for Invoice # 1785 for \$19.16

Dear Mr Kevin Leville,

We have received a payment from Whole Foods for invoice number 1785 for \$19.16. This invoice number does not match any of our invoice numbers. Please will you confirm if this is yours and if so how I can forward the money to you.

Yours sincerely,

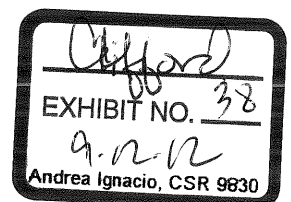
Rebecca Douglas-Clifford

Eat Right Foods Ltd (More benefits in every bite products)

Ph: +64-3-546-4501; Fax: +64-3-547-4501; Mobile: +64-274-321-515 PO Box 1525, Nelson; New Zealand. Website:

www.eatright.co.nz

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Eat Right Foods Ltd

From: Mike & Britta [mb@tantrix.com]
Sent: Wednesday, 26 October 2011 9:57 a.m.
To: enquiries@eatright.co.nz
Subject: nutritarian food bars

Hi there,

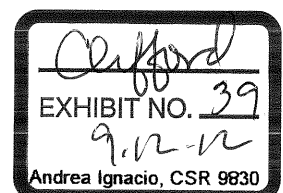
We are semi professional "adventurers" living in Mapua and most days out either climbing, caving or running.

So we are looking for a convenient portable food bar We don't have any allergies but low salt, low sugar, low glycemic is important.

So which of your products do you think would be most suitable?

Cheers
Mike

PS: we are passionate about nutrition
eg <http://www.eatrightamerica.com/why-become-a-nutritarian>



Robert E. Heslin
Jeff Rothenberg
Kevin P. Radigan
Susan E. Farley
Nicholas Mesiti
Phillip E. Hansen*
Blanche E. Schiller
Wayne F. Reinke
David P. Miranda
Victor A. Cardona
Brett M. Hunter
John W. Roger

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Writer's direct email: reh@hrfmlaw.com

August 31, 2010

Via Email: catright@xtra.co.nz

Rebecca Douglas-Clifford
Eat Right Foods Ltd.

Re: Trademark: EAT RIGHT
Our File No. 0719.GEN

Dear Ms. Douglas-Clifford:

We have removed from our web site the reference to the Eating Right product. As previously indicated, we no longer sell that product. You may confirm that the reference has been removed by accessing the following updated link:

<http://www2.pricechopper.com/cgi-bin/cgiwrap/pricechopper/fans/items/blossom.pl/2009/04>

Further, our client has tested its web site by entering various search terms that would ordinarily yield references to "eat right products" or "eat right coupons" as referenced in your cease and desist letter. These searches no longer yield any results to the Eat Right product.

We believe our client has now fully addressed your concerns. Please let me know if you desire any further information.

Very truly yours,

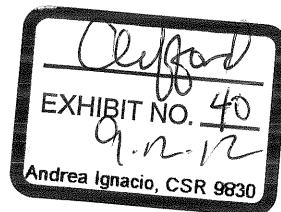
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Robert E. Heslin

Robert E. Heslin

REH/jm

cc: Carrie Terraferma



To: Richard Jurgens	From: Eat Right Foods Ltd
Company: Hy-Vee	Address: PO Box 1525, Nelson, New Zealand
Phone: +515-267-2800	Phone: +643546-4501; Fax: +643547-4501
Fax: +515-267-2817	Email: eatright@extra.co.nz
Date: 30 th July 2010	# Pages: 1

Dear Mr Richard Jurgens and/or Hy-Vee Legal Department

RE: Trademark Infringement

Eat Right Foods Limited ("Eat Right") is the owner of the EATRRIGHT trademarks US Registration No. 3,045,314; US Registration No 3,694,693 and US Registration No 3,694,692 with priority of use rights in the US dating back to October 2001. Eat Right also has additional trademark applications and registrations in other countries.

Through this fax, Eat Right requests that Hy-Vee confirm by email or in writing that Hy-Vee will cease and desist from any use of "EATRRIGHT", "EAT-RIGHT" or "EAT-RIGHT". It is our understanding that Hy-Vee is promoting "EAT-RIGHT STRATEGIES" in connection with its "Live Healthy" marketing campaign (<http://www.livehealthyhy-vee.org/asp/Tips.aspx?id=107>) and when a consumer enters "EAT RIGHT products" on the Hy-Vee website, EATING RIGHT products are offered for sale. This has and is causing confusion with hundreds if not thousands of consumers now referring to EATING RIGHT products as EAT RIGHT.

Although Eat Right wishes to avoid further legal action with Hy-Vee, we intend to enforce our trademark rights to the full extent provided by law. Accordingly, we request that Hy-Vee confirm by email or in writing that these problems will be corrected. We appreciate your cooperation in this regard.

Sincerely,

Rebecca Douglas-Clifford

Eat Right Foods Ltd (More benefits in every bite products)

Ph: +64-3-546-4501; Fax: +64-3-547-4501; Mobile: +64-274-321-515

PO Box 1525, Nelson; New Zealand. Website: www.eatright.co.nz

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